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No. 86-372

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

ELBERT ERKINS, SAMUEL DENSON, BILLY BRYAN, ARTHUR COMER, GEORGE BULLARD, CHARLIE GREENE, and U.S. FIDELITY & GUARANTY CORP.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF OF RESPONDENTS BILLY BRYAN, ARTHUR COMER, GEORGE BULLARD AND CHARLIE GREENE IN SUPPORT OF THE PETITION

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These respondents adopt and support petitioner's Statement of the Questions Presented; Authorities Cited; Reasons for Granting the Writ; Jurisdiction; and Statutory Provisions Involved.[1]

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[1] Attention is called to the fact that these respondents have as petitioners filed a petition for certiorari in Case No. 85-2077. Case No. 85-2077 arises from the same decision of the United States Court of Appeals for the Eleventh Circuit as does the petition herein. In addition to those questions here recited by petitioners, the petition in No. 85-2077 presents the important questions: whether an action under Title V of 29 U.S.C. § 501(b) (herein LMRDA) is governed by the same six-months time limitation as are actions provided in Title I and Title VI of the same Act; and

SUPPLEMENTAL STATEMENT OF THE CASE

These respondents agree with and adopt petitioner's Statement of the Case and supplement same briefly. These respondents were members, and respondents Bryan, Comer and Greene were officers or representatives, of Local 7326, United Steelworkers of America, AFL-CIO-CLC. That Local engaged in a lawful strike at American Buildings Company (the Company) at Eufaula, Alabama, from December 3, 1976 to July 14, 1978.

This civil action under the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 401, *et seq.* (LMRDA), was brought against these respondents on May 1, 1980, in the United States District Court for the Middle District of Alabama. Respondents Erkins and Denson, as plaintiffs in the district court were on notice of their alleged claims against respondents Bryan, Comer, Bullard and Greene more than a year and one-half before they filed their suit.

Also, these respondents were indicted on November 3, 1981, in Docket No. 81-83-N, in that same district court for alleged criminal violations of the Act.

The criminal indictment was based upon substantially the same unfounded and unsupportable allegations of misuse of strike funds as appear in this civil suit. One count also included an allegation of the filing of a false Labor Organization Annual Report Form LM-2.

The indictment charged in summary:

> *Count I—Billy Ray Bryan*—as an officer, embezzlement and conversion of funds of the Local;

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whether the court of appeals correctly interpreted *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151, 103 S.Ct. 2281 (1983), in failing to apply that case's principles of limitation to this suit under § 501(b) of LMRDA.

Respondents suggest that the petition for certiorari in No. 85-2077 and the petition for certiorari here appropriately should be joined.

Count II—Billy Ray Bryan—as an officer, filing a false Labor Organization Annual Report Form LM-2;

Count III—Arthur Comer—as an officer, embezzlement and conversion of funds of the Local;

Count IV—Charlie Greene—as an officer, embezzlement and conversion of funds of the Local;

Count V—George D. Bullard—as an employee of the Local, embezzlement and conversion of funds of the Local.

At trial of the criminal cases to a jury, the Court dismissed Counts II and V of the indictment after hearing the evidence. The jury returned verdicts of not guilty on all remaining counts.

The decision below was incorrect, as Petitioner has set forth. These respondents are the innocent victims of that error.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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